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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,762	10/11/2001	Toshiya Shimura	NU-01021	7580
466	7590	09/19/2005	EXAMINER	
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				ART UNIT
				PAPER NUMBER
				2643

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/973,762

Applicant(s)

SHIMURA ET AL.

Examiner

Barry W. Taylor

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) They raise the issue of new matter (see NOTE below);
 (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. Other: PTO 892 attached.

Continuation Sheet (PTO-303)

a) The Examiner reviewed Applicant's remarks starting on page 11 and continuing to the top of page 14, paper dated 9/7/05 wherein Applicant continue to argue that Valenti provisional application '734 involves using TDR or special pulses sent out on the loops and from this it is clear that a voltmeter is not used.

The Examiner respectfully disagrees. See at least page 12 (second to last line) of Valenti wherein direct measurement of received crosstalk disclosed. Next, the Examiner directs Applicants attention to page 13 (lines 1-2) wherein an alternative may be used: "The BBTH could excite a pair with a signal and measure the received signal on another pair to measure the crosstalk coupling". The Examiner notes that it is not a requirement in '734 to first excite twisted pair before a measurement is taken. Therefore, the Examiner's rejection made Final, dated 6/8/05 still applies. In other words, Valenti (Pub. No.: 2002/0041565) paragraphs 0034 – 0036 and the last two lines of paragraph 0046) clearly disclose that spectrum analyzer or a voltage meter (a.k.a. voltmeter) can be used.

b) Applicants continue to argue that Valenti provisional patent injects a signal into the line as part of the test (see top of page 15).

If this where true why would Valenti even bother with using "spectral analyzer" the directly measures the received crosstalk? By definition alone, a spectral analyzer displays frequency spectrum along horizontal axis and amplitude along vertical axis. The Examiner is unaware of spectral analyzers requiring injection of signal on line before displaying amplitude verses frequency. To support Examiner's position and to

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help Applicant with future correspondence, the Examiner is proving old and well known literature showing spectral analyzers do not require injected signals to be applied.

---(5,808,463) Nagano figure 2, item 10 clearly shows spectral analyzer used to display amplitude verses frequency (figure 1). In fact, figure 5 reveals first acquiring a signal (step 101), convert to digital (step 104), perform FFT (step 109), compare to adjacent channel (step 110) and display (step 111).

---"A Spectrum Analyzer for the Radio Amateur", by Wess Hayward and Terry White never mention spectrum analyzer require injected signal to be used.

The Examiner respectfully disagrees. See at least page 12 (second to last line) of Valenti wherein direct measurement of received crosstalk disclosed. Next, page 13 (lines 1-2) wherein Valenti discloses a single m

Barry J. Hay
Primary Examiner
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